

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BUTTE DIVISION**

CLAYTON RUSSELL,

Petitioner,

vs.

JAMES SALMONSON, ATTORNEY
GENERAL OF THE STATE OF
MONTANA,

Respondents.

CV-18-19-BU-BMM-JCL

ORDER

Petitioner Clayton Russell (“Russell”) filed an application for writ of habeas corpus under 28 U.S.C. § 2254 on March 2, 2018. Russell is a state prisoner proceeding pro se. United States Magistrate Judge Jeremiah C. Lynch entered Findings and Recommendations in this matter on May 7, 2018. (Doc. 4.)

Neither party filed objections. When a party makes no objections, the Court need not review *de novo* the proposed Findings and Recommendations. *Thomas v. Arn*, 474 U.S. 140, 149-52 (1986). This Court will review Judge Lynch’s Findings and Recommendations, however, for clear error. *McDonnell Douglas Corp. v. Commodore Bus. Machs., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981).

Russell's petition does not specify the nature of his claims or the factual basis underlying them. (Doc. 3 at 1.) Judge Lynch directed Russell to provide an Amended Petition and a standard application to proceed in forma pauperis by April 28, 2018. *Id.* at 3. Russell did not timely respond to the Court's order.

I. 28 U.S.C. § 2254 Petition

Judge Lynch determined that Federal Rule of Civil Procedure 41(b) authorizes the Court to dismiss an action if the plaintiff fails to prosecute the action and/or fails to comply with the Court's order. (Doc. 4 at 2.) The Court weighs five factors in determining whether Russell's failure to respond and prosecute warrants dismissal. The Court must weigh the following: (1) the public's interest in expeditious resolution of litigation; (2) the court's need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of cases on their merits; and (5) the availability of less drastic sanctions. *Carey v. King*, 856 F.2d 1439, 1440 (9th Cir. 1988). Judge Lynch determined after examining the five factors that this matter should be dismissed for failure to prosecute and/or for failure to comply with the Court's order. (Doc. 4 at 2.)

II. Certificate of Appealability

Judge Lynch determined that a certificate of appealability should be denied. *Id.* at 3. "The district court must issue or deny a certificate of appealability when it enters a final order adverse to the applicant." Rule 11(a), Rules Governing § 2254

Proceedings. A certificate of appealability should issue as to those claims on which a petitioner makes a “substantial showing of the denial of a constitutional right.”

28 U.S.C. § 2253(c)(2). The standard is satisfied if “jurists of reason could disagree with the district court’s resolution of [the] constitutional claims” or “conclude the issues presented are adequate to deserve encouragement to proceed further.”

Miller-El v. Cockrell, 537 U.S. 322, 327 (2003) (citing *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)).

Judge Lynch correctly determined that the claims that Russell attempts to advance do not appear to make a substantial showing that he was deprived of a constitutional right. (Doc. 4 at 3.) Further, Russell has not complied with the Court’s order to explain or clarify his claims. *Id.* A certificate of appealability is denied because reasonable jurists would find no reason to encourage further proceedings.

III. Conclusion

The Court has reviewed Judge Lynch’s Findings and Recommendations for clear error. The Court finds no error in Judge Lynch’s Findings and Recommendations, and adopts them in full.

IT IS ORDERED that Judge Lynch’s Findings and Recommendations (Doc. 4), are ADOPTED IN FULL.

IT IS ORDERED that Russell's Petition (Doc. 1) is **DISMISSED** without prejudice for failure to comply with the Court's March 13, 2018 order and/or for failure to prosecute.

IT IS ORDERED that the Clerk of Court shall enter a judgment of dismissal.

IT IS FURTHER ORDERED that a certificate of appealability is **DENIED**.

DATED this 26th day of June, 2018.



Brian Morris
United States District Court Judge